

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALPENSPRUCE EDUCATION  
SOLUTIONS INC.,

Plaintiff,

v.

CASCADE PARENT LIMITED; and  
PARALLELS INC.,

Defendants.

CASE NO. C23-692 MJP

ORDER GRANTING  
DEFENDANTS' MOTION TO  
COMPEL DISCOVERY

This matter comes before the Court on the Parties' LCR 37 Expedited Joint Motion Regarding Defendants' Motion to Compel Discovery. (Dkt. No. 47.) Having reviewed the Motion and all supporting materials, the Court GRANTS the Motion.

**BACKGROUND**

Defendants seek to compel supplemental responses to Interrogatory No. 10 and 11. Interrogatory No. 10 asks Plaintiff to:

1 Identify each expense incurred and/or activity performed to promote and/or build  
2 awareness of Your ALLUDO brand from 2016 to present and identify all documents that  
support such claimed expense and/or activity.

3 (Mot. at 5.) After voluminous objections, Plaintiff answered Interrogatory No. 10 as follows:

4 Plaintiff will produce nonprivileged documents consisting of income statements  
5 sufficient to show expenses incurred in the promotion of Plaintiff's products, and  
will supplement its response accordingly thereafter to identify documents by Bates  
6 number. These expenses are listed in the "Product Subcontractors – 1099," "Product  
Subcontractors - Corporate or Foreign," "Education/Conference," "Marketing and  
7 Promotion," "Marketing and Promotion – 1099," "Meals and Entertainment,"  
Postage/Shipping," and "Travel- Air/Hotels/Other" line items.

8 (Id.) Plaintiff then supplemented this response, stating:

9 Plaintiff has produced documents consisting of income statements sufficient to  
10 show expenses incurred in the promotion of Plaintiff's products. These expenses  
are listed in the "Product Subcontractors – 1099," "Product Subcontractors -Corporate or  
11 Foreign," "Education/Conference," "Marketing and Promotion," "Marketing and  
Promotion – 1099," "Meals and Entertainment," Postage/Shipping," and "Travel-  
12 Air/Hotels/Other" line items. See ALPEN\_0000277 to ALPEN\_0000293. Plaintiff's  
review of its ESI is ongoing and Plaintiff will further supplement this response.

13 (Id. at 5-6.)

14 Interrogatory No. 11 asks Plaintiff to:

15 Identify and describe all factors that contributed to any increase or decrease in  
16 Alpenspruce's revenue year to year between 2016 and present and identify documents  
sufficient to support those claimed factors.

17 (Id. at 6.) After lengthy objections, Plaintiff responded as follows:

18 Plaintiff will produce nonprivileged documents sufficient to show factors that have  
19 impacted Plaintiff's annual revenue and will supplement its response accordingly  
thereafter to identify documents by Bates number. Plaintiff's revenue has been positively  
20 impacted by Plaintiff's investment in marketing, search engine results, conference  
attendance, conference sponsorship, increase in content library, client referrals, quality  
21 customer service, and business focus on the K-12 education field. These factors  
contributed to Plaintiff's growth in revenue. Beginning in 2022, the following factors  
22 have contributed to Plaintiff's decrease in revenue: 1) diluted search engine results  
caused by Defendants' adoption of, and marketing for, an identical ALLUDO mark; 2)  
23 conference attendee confusion as to the relationship or affiliation between Plaintiff and  
Defendants caused by Defendants' adoption and promotion of trademark confusingly  
24 similar to Plaintiff's ALLUDO mark; 3) potential customers' confusion as to the

relationship or affiliation between Plaintiff and Defendants caused by Defendants' adoption and promotion of trademark confusingly similar to Plaintiff's ALLUDO mark.

(Id. at 6.) Plaintiff supplemented its response as follows:

Documents reflecting the positive impact of Plaintiff's revenue by Plaintiff's investment in its marketing, search engine results, conference attendance, conference sponsorship, increase in content library, client referrals, quality customer service, and business focus on the K-12 education field are reflected in the following documents: ALPEN\_0000582-ALPEN\_0000742. Plaintiff's review of its ESI is ongoing and Plaintiff will further supplement this response to identify by Bates-number additional documents reflecting any positive factors reflecting an increase in revenue identified in Plaintiff's response.

Documents reflecting factors contributing to a decrease in revenue are reflected in the following documents: ALPEN\_0000081, ALPEN\_0000082-83, ALPEN\_0000084, ALPEN\_0000085, ALPEN\_0000090-93, ALPEN\_0000094-101, ALPEN\_0000102-107, ALPEN\_0000197-000198, ALPEN\_0000313-0000368; ALPEN\_0001338, ALPEN\_00001352, ALPEN\_0001353, ALPEN\_0001379, ALPEN\_0001380; ALPEN\_0006167, ALPEN\_0000108-ALPEN\_0000196 (Plaintiff's confusion log); documents supporting Plaintiff's confusion log and associated emails listed on the confusion log, at ALPEN\_0000754-ALPEN\_0008239. Plaintiff's review of its ESI is ongoing and Plaintiff will further supplement this response to identify by Bates number additional documents reflecting those factors identified in Plaintiff's response.

(Id. at 6-7.)

Defendants now move to compel further answers. As to Interrogatory No. 10, Defendant ask the Court to compel Plaintiff to "provide a full answer identifying in writing the specific activities that Plaintiff contends it performed to promote and/or build awareness of its brand and the expense associated with each activity." (Mot. at 8.) Alternatively, Defendant asks the Court to prohibit Plaintiff from "providing any testimony or argument that it has engaged in any activities to promote and/or build awareness of its brand, that its brand has established goodwill, or that it is entitled to future corrective advertising damages." (Id. at 8-9.) Plaintiff objects to supplementing Interrogatory No. 10 on the theory that the income statements it has provided are sufficient to answer this interrogatory and that any questions about those materials can be examined through depositions. (Id. at 11.) As to Interrogatory No. 11, Defendants ask the Court

1 to “compel Plaintiff to provide a full response to this Interrogatory, identifying all factors that  
 2 contributed to an increase or decrease in Alpenspruce’s revenue year to year from 2016 to 2022.”  
 3 (Id. at 10.) Plaintiff refuses to supplement its response, noting that it already identified the factors  
 4 involved and produced documents supporting the factors such that Defendants have all the  
 5 information they sought through the interrogatory. (Id. at 11.)

## 6 ANALYSIS

### 7 A. Legal Standard

8 A party “may obtain discovery regarding any nonprivileged matter that is relevant to any  
 9 party’s claim or defense and proportional to the needs of the case,” among other considerations.  
 10 Fed. R. Civ. P. 26(b)(1). Whether discovery is proportional to the needs of the case hinges on  
 11 “the importance of the issues at stake in the action, the amount in controversy, the parties’  
 12 relative access to relevant information, the parties’ resources, the importance of the discovery in  
 13 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its  
 14 likely benefit.” Id.

15 The parties must also meet and confer prior in an effort to resolve the dispute before  
 16 seeking assistance of the Court, and so certify. See Local Civil Rule 37(a)(1). The Court is  
 17 satisfied that the Parties have conferred as required by this Local Rule, and appreciates their use  
 18 of the joint motion format of Local Civil Rule 37(a).

### 19 B. Interrogatory No. 10

20 The Court agrees with Defendants that Plaintiffs must supplement its response to  
 21 Interrogatory No. 10. The information sought is directly relevant to the question of the strength  
 22 of Plaintiff’s trademark, a factor to be considered as part of Plaintiff’s trademark infringement  
 23 claim. See Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgt., Inc., 618 F.3d 1025,  
 24

1 1032 (9th Cir. 2010) (noting that “[a] mark’s strength” is relevant to the overall confusion  
2 analysis in a trademark infringement action). And the request is proportional to the needs of the  
3 case, as this is a factor the Court and/or jury must eventually analyze. Plaintiff’s initial and  
4 supplemental responses fail to identify with sufficient specificity the activities it undertook to  
5 promote its brand from 2016 to the present and the related expenses. The income statements  
6 provided in discovery are not a sufficient means of responding, as they do not identify with any  
7 specificity the activities undertaken and the related expenses. The Court therefore GRANTS the  
8 Motion and ORDERS Plaintiff to identify in writing the specific activities that Plaintiff contends  
9 it performed to promote and/or build awareness of its brand and the expense associated with each  
10 activity from 2016 to the present.

11 **C. Interrogatory No. 11**

12 The Court also agrees that Plaintiff must supplement its response to Interrogatory No. 11.  
13 The information sought is relevant to damages, and it is proportional to the needs of the case  
14 particularly since Plaintiff has identified no particular burden. While the Court agrees with  
15 Plaintiff that it has satisfactorily identified the factors that contributed to increases and decreases  
16 in revenue, the Court finds that the response is unduly limited to 2022 to the present.  
17 Interrogatory No. 11 seeks this information going back to 2016, and revenues associated with  
18 that time period are relevant to damages. Plaintiff provides no reason why it would be  
19 unreasonable to provide the information for this time period. The Court therefore GRANTS  
20 Defendants’ Motion and ORDERS Plaintiff to supplement its written response to identify all  
21 factors that contributed to an increase or decrease in its revenue year to year from 2016 to 2022.  
22  
23  
24

**CONCLUSION**

Defendants have identified sufficient reasons why Plaintiff's responses to Interrogatories Nos. 10 and 11 are deficient. The Court therefore GRANTS the Motion and ORDERS Plaintiff to supplement its responses consistent with this Order. Plaintiff must do so within 7 days of entry of this Order.

The clerk is ordered to provide copies of this order to all counsel.

Dated November 6, 2024.



Marsha J. Pechman  
United States Senior District Judge